

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 EASTERN DISTRICT OF PENNSYLVANIA

4 CARLOS BROWN,)
5 Plaintiff)
6 v.) Case No.:
7 NCO FINANCIAL SYSTEMS, INC.,) COMPLAINT AND DEMAND FOR
8 Defendant) JURY TRIAL
9) (Unlawful Debt Collection Practices)

10 **COMPLAINT**

11 CARLOS BROWN ("Plaintiff"), by and through his attorneys, KIMMEL &
12 SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC.
13 ("Defendant"):

14 **INTRODUCTION**

15 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
16 U.S.C. § 1692 *et seq.* ("FDCPA").

17 **JURISDICTION AND VENUE**

18 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
19 that such actions may be brought and heard before "any appropriate United States district court
20 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original
21 jurisdiction of all civil actions arising under the laws of the United States.

22 3. Defendant has its corporate headquarters in the Commonwealth of Pennsylvania
23 and as such, personal jurisdiction is established.

24 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).
25

PARTIES

5. Plaintiff is a natural person residing in Philadelphia, Pennsylvania.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road, Horsham, PA 19044.

8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. At all pertinent times hereto, Defendant was hired to collect a consumer debt and attempted to collect that debt from Plaintiff.

11. Upon information and belief, the debt arose out of transactions that were primarily for personal, family, or household purposes.

12. Beginning on or around April 9, 2011, and continuing through December 5, 2011, Defendant contacted Plaintiff on a repetitive and continuous basis on his cellular telephone in its attempts to collect a debt.

13. Many of Defendant’s calls to Plaintiff originated from (800) 515-8572, which the undersigned has confirmed is a telephone number belonging to Defendant.

14. Defendant contacted Plaintiff, on average, twice per day, and, on occasion, contacted him as frequently as four times in a single day.

15. On multiple occasions, Defendant contacted Plaintiff at times which were inconvenient for Plaintiff to receive collection calls, specifically contacting Plaintiff prior to

1 8:00 a.m.

2 16. For example, on November 9, 2011, Defendant called Plaintiff at or around 7:00
3 a.m.

4 17. Also, on December 3, 2011, Defendant called Plaintiff at approximately 7:30
5 a.m.

6 18. Most recently, on December 5, 2011, Defendant contacted Plaintiff on his
7 cellular telephone in an attempt to collect a debt.

8 19. Furthermore, in at least one instance where Plaintiff spoke with one of
9 Defendant's representative, Defendant's representative threatened Plaintiff that he would be
10 sued if he did not pay the alleged debt.

11 20. Upon information and belief, at the time Defendant threatened to commence
12 legal action against Plaintiff, it did not intend to take such action, and to date, Defendant has not
13 taken any legal action against Plaintiff.

14 21. Lastly, in its attempts to collect a debt from Plaintiff, in addition to making
15 continuous and repeated collection calls to Plaintiff, Defendant also sent Plaintiff
16 correspondence seeking and demanding payment of the alleged debt.

17 22. Specifically, on April 9, 2011, Defendant sent Plaintiff correspondence stating
18 that the creditor "has placed [an] account with [its] office for collection." See Exhibit A,
19 Defendant's April 9, 2011, letter to Plaintiff.

20 23. However, Defendant then claimed that if Plaintiff "choose[s] not to respond to
21 this notification, [NCO] will assign [his] account to a collector with instructions to collect the
22 balance." See Exhibit A.

23 24. Defendant's letter was written to confuse and mislead Plaintiff as to whether this
24
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1 account was in collections.

2 25. Upon information and belief, at the time that Defendant sent the April 9, 2011
3 letter, Plaintiff's account was already in collections and Defendant was actively attempting to
4 collect on the account.

5 CONSTRUCTION OF LAW

6 26. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
7 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
8 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
9 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
10 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
11 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

12 27. The FDCPA is a remedial statute, and therefore must be construed liberally in
13 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
14 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
15 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
16 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
17 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
18 2002).

19 28. The FDCPA is to be interpreted in accordance with the "least sophisticated"
20 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
21 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
22 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for
23 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
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1 and the fact that a false statement may be obviously false to those who are trained and
 2 experienced does not change its character, nor take away its power to deceive others less
 3 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
 4 ensures protection of all consumers, even naive and trusting, against deceptive collection
 5 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
 6 collection notices. Clomon, 988 F. 2d at 1318.

7
 8 **COUNT I**
 9 **DEFENDANT VIOLATED THE**
 10 **FAIR DEBT COLLECTION PRACTICES ACT**

11 29. In its actions to collect a debt, Defendant violated the FDCPA in one or more of
 12 the following ways:

- 13 a. Defendant violated the FDCPA generally;
- 14 b. Defendant violated §1692c(a)(1) of the FDCPA when it communicated with
 15 Plaintiff at a time or place that it knew or should have known was
 16 inconvenient;
- 17 c. Defendant violated §1692d of the FDCPA when it harassed, oppressed or
 18 abused Plaintiff in connection with the collection of a debt;
- 19 d. Defendant violated §1692d(5) of the FDCPA when caused Plaintiff’s phone to
 20 ring repeatedly or continuously with the intent to annoy, abuse, or harass
 21 Plaintiff;
- 22 e. Defendant violated §1692e of the FDCPA when it used false, deceptive, or
 23 misleading representations or means in connection with the collection of a
 24 debt;
- 25 f. Defendant violated §1692e(5) of the FDCPA when it threatened to take action

that it did not intent to take;

g. Defendant violated §1692e(10) of the FDCPA when it used false and deceptive means in attempting to collect a debt; and

h. Defendant violated §1692f of the FDCPA when it used unfair and unconscionable means in connection with the collection of a debt.

WHEREFORE, Plaintiff, CARLOS BROWN, respectfully prays for a judgment as follows:

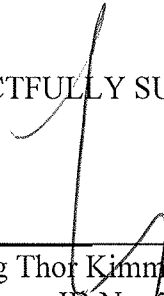
- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, CARLOS BROWN, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Date: 12/23/11

By: 
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